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130516Z Jun 02

2002HANOI01523 - UNCLASSIFIED

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ACTION EB-00

INFO	LOG-00	AGRE-00	AID-00	AMAD-00	CEA-01	CIAE-00	CTME-00
	DINT-00	DODE-00	ITCE-00	DOT-00	SRPP-00	EAP-00	EXME-00
	OIGO-00	E-00	FAAE-00	UTED-00	VC-00	FRB-00	H-01
	TEDE-00	INR-00	ITC-01	LAB-01	LOC-01	L-00	VCE-00
	AC-01	NSAE-00	NSCE-00	OES-01	OMB-01	OPIC-01	PA-00
	PRS-00	ACE-00	SP-00	SSO-00	SS-00	STR-00	TEST-00
	TRSE-00	USIE-00	EPAE-00	DRL-02	G-00	NFAT-00	SAS-00
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FM AMEMBASSY HANOI  
TO SECSTATE WASHDC PRIORITY 6752  
INFO AMCONSUL HO CHI MINH CITY  
USDOC WASHDC  
USDA WASHDC

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SIPDIS

STATE FOR EB/IPC:DRBEAN, EAP/BCLTV AND EB/ODC  
STATE ALSO PASS USTR BURCKY/ALVAREZ AND BRYAN  
STATE ALSO PASS USPTO FOR URBAN  
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TAGS: [KIPR](#) [ETRD](#) [ECON](#) [VN](#) [IPROP](#)  
SUBJECT: VIETNAM: INTELLECTUAL PROPERTY RIGHTS ON THE AGENDA  
FOR PRIVATE SECTOR AND GOVERNMENT AGENCIES

1. SUMMARY: INTELLECTUAL PROPERTY RIGHTS CONTINUES A FRONT-BURNER ISSUE AMONG THE PRIVATE SECTOR AND SOME GOVERNMENT AGENCIES IN VIETNAM. THIS CABLE SUMMARIZES TWO RECENT IPR SEMINARS IN HANOI SPONSORED BY FRANCE AND SWITZERLAND AND WHICH INCLUDED PARTICIPATION BY THE EMBASSY ECONOMIC SECTION, THE USAID-FUNDED STAR PROJECT, AND A NUMBER OF U.S. FIRMS. IT WAS CLEAR FROM BOTH SEMINARS THAT THERE IS A GREAT DEAL OF INTEREST FROM BOTH FOREIGN AND DOMESTIC FIRMS IN VIETNAM ON WHO THE ENFORCEMENT PLAYERS ARE AND HOW THE PROCESS SHOULD WORK. IT WAS ALSO CLEAR THAT, SPURRED BY THEIR OBLIGATIONS UNDER THE U.S.-VIETNAM BILATERAL TRADE AGREEMENT, VIETNAMESE AGENCIES INVOLVED IN IPR ENFORCEMENT ARE BEGINNING TO EXAMINE THEIR ROLES AND IDENTIFY AREAS WHERE THEY LACK CAPACITY AND TRAINING. WHILE THE LARGER LEGAL CONTEXT FOR IPR PROTECTION APPEARS TO BE ON TRACK, THERE REMAINS A GENERAL LACK OF UNDERSTANDING OF IPR PROTECTION AMONG AUTHORITIES, FIRMS AND THE PUBLIC AND A LACK OF CLEAR OPERATING GUIDELINES FOR AGENCIES CHARGED WITH IPR ENFORCEMENT IN THE FIELD. END SUMMARY.

FRANCE AND THE EU FOCUS ON ASIA

2. IN MAY, THE FRENCH NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, IN CONJUNCTION WITH THE EUROPEAN COMMISSION, THE VIETNAMESE, THAI AND MALAYSIAN GOVERNMENTS AND A NUMBER OF PRIVATE SECTOR FIRMS (INCLUDING MICROSOFT AT OUR SUGGESTION), SPONSORED A REGIONAL CONFERENCE IN HANOI ON THE  
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FUTURE FOR INTELLECTUAL PROPERTY IN ASIA. WHILE THE CONFERENCE WAS NOT VIETNAM SPECIFIC, THE EMBASSY WAS INVITED TO BRIEF THE CONFERENCE PARTICIPANTS ON THE IPR PROVISIONS IN THE U.S. VIETNAM BILATERAL TRADE AGREEMENT (BTA) AND ON OUR WORK WITH VIETNAM ON ITS IMPLEMENTATION. SINCE THE CONFERENCE TOOK PLACE SHORTLY AFTER THE ANNOUNCEMENT OF USTR'S SPECIAL 301 REPORT, OUR TALK INCLUDED A SHORT REFERENCE TO THOSE CONCLUSIONS. WE STRESSED THAT THE U.S. APPROACH WAS TO ADDRESS IPR ISSUES FIRST IN THE MULTILATERAL CONTEXT, THEN REGIONAL OR BILATERAL, AND ONLY WHEN THOSE APPROACHES WERE NOT SUFFICIENTLY EFFECTIVE, DID WE USE ALL OTHER TOOLS AVAILABLE TO ENSURE ADEQUATE PROTECTION OF IPR. MANY OF THE EUROPEAN PARTICIPANTS (AND SOME OF THE REGIONAL) PROFESSED A PREFERENCE FOR "VOLUNTARY" MEASURES TO INCREASE IPR PROTECTION IN ASIA, BUT IT WAS CLEAR THAT THE U.S. WAS THE ONLY COUNTRY ABLE TO SHOW SPECIFIC PROGRESS WITH VIETNAM ON IPR ISSUES, THANKS TO THE BTA. IN ADDITION TO OUR

EMBASSY SPEAKER, THE USAID-FUNDED STAR PROJECT ALSO PARTICIPATED IN THE SEMINAR'S WORKSHOP ON DEVELOPMENT OF TECHNICAL COOPERATION.

SWITZERLAND FOCUSES ON IPR ENFORCMENT

13. ALSO IN MAY, THE SWISS PUT ON ONE OF THE MOST USEFUL IPR SEMINARS TO DATE IN HANOI, ENTITLED "SEMINAR ON INDUSTRIAL PROPERTY AND THE INTEGRATION OF VIETNAM INTO THE MULTILATERAL TRADE SYSTEM - ENFORCEMENT" AND ORGANIZED BY THE "SPECIAL PROGRAMME OF COOPERATION BETWEEN VIETNAM AND SWITZERLAND IN THE FIELD OF INTELLECTUAL PROPERTY. SPEAKERS INCLUDED SOME OF THE VIETNAMESE GOVERNMENT OFFICIALS IN CHARGE OF IPR PROTECTION AND ENFORCEMENT EFFORTS. SOME UNCLASSIFIED

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HIGHLIGHTS OF THE CONFERENCE FOLLOW BELOW.

WTO - TRIPS AND DOHA

14. THE VIETNAMESE FIRMS AND GOVERNMENT OFFICIALS PRESENT WERE PARTICULARLY INTERESTED IN THE SESSION ON "THE WTO AFTER THE DOHA MINISTERIAL CONFERENCE - IP: PATENT, GEOGRAPHICAL INDICATIONS AND TRADITIONAL KNOWLEDGE", PRESENTED BY DR. FELIX ADDOR, CHIEF LEGAL OFFICER AND DEPUTY DIRECTOR GENERAL, SWISS FEDERAL INSTITUTE OF IP. MUCH OF THE Q&A SESSION WAS RELATED TO TRADITIONAL MEDICINES. OTHER SESSIONS INCLUDED TRIPS OBLIGATIONS AND ENFORCEMENT ISSUES, INCLUDING DISPUTE SETTLEMENT.

15. DR. PHAM DINH CHUONG, DIRECTOR, NATIONAL OFFICE OF INDUSTRIAL PROPERTY RIGHTS, ADDRESSED THE SESSION ON "ACCESSION NEGOTIATIONS OF VIETNAM TO THE WTO: STATE OF PLAY IN THE FIELD OF IP." HE REVIEWED THE LATEST DEVELOPMENTS IN THE NEGOTIATIONS WITHIN THE WTO WORKING GROUP ON IP. HE TOLD THE AUDIENCE THAT VIETNAM HAD BUILT AN AMBITIOUS ACTION PLAN ON IPR, NAMELY TRIPS. VIETNAM HAD EXPECTED TO BE FULLY IN COMPLIANCE WITH TRIPS ON JANUARY 01, 2002. UP TO NOW, THE PLAN HAS NOT BEEN FINISHED. HOWEVER, ACCORDING TO DR. CHUONG, VIETNAM HAS REACHED SOME MOST IMPORTANT TARGETS, FOR EXAMPLE, ON THE LEGAL IMPLEMENTATION OF TRIPS, VIETNAM'S LEGAL SYSTEM IS ONLY SHORT OF REGULATIONS ON PROTECTION OF

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INFO	LOG-00	AGRE-00	AID-00	AMAD-00	CEA-01	CIAE-00	CTME-00
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	PRS-00	ACE-00	SP-00	SSO-00	SS-00	STR-00	TEST-00
	TRSE-00	USIE-00	EPAE-00	DRL-02	G-00	NFAT-00	SAS-00

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SIPDIS

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LAYOUT DESIGN OF INTEGRATED CIRCUITS.

16. ACCORDING TO DR. CHUONG, IN THE CONTEXT OF ITS WTO ACCESSION TALKS, VIETNAM HAS ALREADY FINISHED THE "TRANSPARENCY" PHASE. VIETNAM IS NOW MOVING TO "SUBSTANTIAL NEGOTIATION" PHASE. HE NOTED THAT THE LATEST NEGOTIATION WAS HELD IN GENEVA ON APRIL 12-18, 2002 AND THAT DURING THOSE TALKS THE U.S, EU, AUSTRALIA AND SWITZERLAND HAD RATED HIGHLY VIETNAM'S EFFORT ON CREATING AN ADEQUATE LEGAL STRUCTURE FOR IPR PROTECTION. HOWEVER, HE NOTED THAT VIETNAM STILL HAS TO CONFRONT BIG CHALLENGES IN EFFECTIVE ENFORCEMENT. AS REGARDS ENFORCEMENT, VIETNAM HAS PUT SPECIAL

EMPHASIS ON ADMINISTRATION REMEDIES TO PREVENT AND DEAL WITH IPR VIOLATIONS. BUT, HE ADMITTED THAT IPR VIOLATIONS ARE A REAL "HEADACHE ISSUE" IN VIETNAM WITH INCREASINGLY MORE COMPLICATED INFRINGEMENT SITUATIONS. COUNTERFEIT AND PIRATED PRODUCTS ARE SOLD PUBLICLY THROUGHOUT THE COUNTRY. REGARDING COMPLETION OF AN EFFECTIVE IPR REGIME IN VIETNAM THAT IS IN COMPLIANCE WITH TRIPS, DR. CHUONG NOTED EFFECTIVE ENFORCEMENT IS THE GREATEST CHALLENGE AND NUMBER ONE TARGET OF VIETNAM.

TRADEMARK ENFORCEMENT DRAWS INTEREST

17. ANOTHER AUDIENCE GRABBING SESSION WAS "TRADEMARK ENFORCEMENT: AN INSIDER'S VIEW", PRESENTED BY BHARAT DUBE, IP COUNSEL, RICHMONT INTERNATIONAL. DUBE USED CASE STUDIES  
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(INCLUDING CARTIER) TO ILLUSTRATE THE TYPES OF COUNTERFEITING ACTIVITIES THAT TAKE PLACE AND METHODS OF INVESTIGATION, INCLUDING HOW TO DEVELOP EVIDENCE FOR LOCAL LAW ENFORCEMENT AGENCIES AND HOW TO GET THEM TO ACT ON THAT EVIDENCE. THE PARTICIPANTS WERE CLEARLY INTERESTED IN THIS ISSUE AND IN UNDERSTANDING THE ROLES OF EACH OF DIFFERENT ELEMENTS INVOLVING IN IPR ENFORCEMENT.

CUSTOMS LAYS OUT PROBLEMS AND FUTURE ACTIONS

18. VU NGOC ANH, DIRECTOR, INSTITUTE FOR CUSTOM RESEARCH, GENERAL DEPARTMENT OF CUSTOM MADE A SPEECH ON "VIETNAMESE CUSTOMS' EXPERIENCE IN IP ENFORCEMENT". HE SAID VIETNAM'S CUSTOMS DEPARTMENT PLAYS AN IMPORTANT ROLE IN IPR PROTECTION RELATED TO IMPORTS AND EXPORTS. HOWEVER, CUSTOMS' ENFORCEMENT ACTIONS ARE STILL LIMITED. THE MAIN REASONS WERE THE LACK OF AWARENESS OF IPR PROTECTION BY CUSTOMS OFFICIALS, THE SHORTAGE OF SPECIALIZED CUSTOMS IPR SECTIONS, AND CONSEQUENTLY, INCONSISTENT GUIDANCE WITHIN CUSTOMS ON IPR ENFORCEMENT.

19. ANH SAID THE CUSTOMS DEPARTMENT NEEDS TO DO THE FOLLOWING TASKS IN THE FUTURE. FIRST, BUILD SPECIALIZED IPR SECTIONS IN THE GENERAL DEPARTMENT OF CUSTOMS AS WELL AS IN LOCAL CUSTOMS OFFICES WITH A DATABASE SYSTEM FOR KEEPING TRACK OF GOODS AND TO COMPARE THE IMPORT OR EXPORT OF GOODS THAT HAVE REGISTERED TRADEMARKS OR COPYRIGHTS. SECOND, TRAIN THE PROFESSIONAL CUSTOMS STAFF TO INCREASE AWARENESS OF IPR PROTECTION. THIRD, SET UP A MECHANISM FOR IPR HOLDERS TO REQUEST IPR PROTECTION ON A LONG-TERM AND CASE-BY-CASE BASIS. FINALLY, PUSH FOR INCREASED INTERNATIONAL COOPERATION  
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WITH OTHER COUNTRIES TO GET MORE EXPERIENCE IN IPR ENFORCEMENT.

MARKET MANAGEMENT BUREAU EXPLAINS ITS ENFORCEMENT ROLE

10. LE THE BAO, DIRECTOR, MARKET MANAGEMENT BUREAU ("MMB") PRESENTED "MARKET MANAGEMENT ENFORCERS WITH COUNTERFEIT AND INDUSTRIAL PROPERTY INFRINGEMENT FIGHTING". (NOTE: THE MMB IS THE STATE AGENCY RESPONSIBLE FOR DOMESTIC COMMERCE. IN TERMS OF IPR PROTECTION, MMB IS RESPONSIBLE FOR INSPECTING FOR AND DEALING WITH COUNTERFEIT TRADEMARKS AND INDUSTRIAL PROPERTY INFRINGEMENT. MMB HAS COOPERATED WITH A NUMBER OF COUNTRIES ON TRADEMARK ENFORCEMENT, IN PARTICULAR WITH FRANCE ON A PROJECT FOR THE PROTECTION FOR APPELLATION OF ORIGIN OF GOODS.) BAO OUTLINED THE MEASURES TAKEN BY MMB TO PROTECT IPR, SUCH AS STRENGTHENING PUBLIC AWARENESS, ENHANCING COOPERATION BETWEEN IPR ENFORCEMENT AGENCIES AND IPR ADMINISTRATIVE AGENCIES, AND ENCOURAGING ENTERPRISES TO ACTIVELY PROTECT THEIR PRODUCTS. BAO ALSO NOTED THAT THE MMB FACES A NUMBER OF DIFFICULTIES IN TAKING ACTION AGAINST COUNTERFEIT AND IPR INFRINGEMENT. IN PARTICULAR, HE SAID THAT THE CURRENT LEGAL GUIDELINES THAT APPLIED TO THE MMB'S WORK WERE AT TIMES UNCLEAR AND MADE A SOLID LEGAL DETERMINATION OF INFRINGEMENT MORE COMPLICATED AND "CONTROVERSIAL." FOR EXAMPLE, BAO CLAIMED THAT A NUMBER OF LEGAL GUIDELINES MENTION THE CONCEPT OF "USE OF A SIGN THAT

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IS IDENTICAL OR SIMILAR TO THE PROTECTED TRADEMARK" OR "USE OF A SIGN THAT IS EASY TO CAUSE CONFUSION." BAO CONCLUDED THAT THE CONCEPT OF IPR IN VIETNAM WAS STILL A NEW AND "SENSITIVE" MATTER. AWARENESS OF IPR PROTECTION AMONG THOSE WHO ARE SUPPOSED TO ENFORCE THE LAW, THE PRODUCERS, THE TRADERS AND THE PUBLIC IS VERY LIMITED.

COURTS NEED SEPARATE IPR CODE AND BETTER LITIGATION LAW

11. NGUYEN VAN LUAT, VICE DIRECTOR, INSTITUTE FOR JUDICIAL SCIENCE (SUPREME PEOPLE'S COURT) ADDRESSED THE ISSUE OF "THE ROLE OF VIETNAM'S COURTS IN PROTECTING INDUSTRIAL PROPERTY RIGHTS UNDER CIVIL AND CRIMINAL LITIGATION PROCEDURES." THE PRESENTATION OUTLINED THE COURT'S ROLE AND VIETNAM'S CIVIL AND CRIMINAL LITIGATION PROCEDURES FOR SETTling IPR DISPUTES. HE NOTED THAT VIETNAM NEEDS TO COMPLETE LEGAL REGULATIONS ON IPR, IN PARTICULAR, TO PROMULGATE A SEPARATE IPR CODE AND TO PERFECT LITIGATION LAW.

12. THE FINAL PRESENTATION "COMMENTS ON IPR ENFORCEMENT" MADE BY JOSEPH T. SIMONE, MR. MAGNUS HIRSHCH, AND MR. PAUL NORRIS, LAWYERS OF BAKER & MCKENZIE IN HONG KONG/ BEIJING/ FRANKFURT/ HO CHI MINH. THIS SESSION DREW A GREAT DEAL OF ATTENTION FROM THE AUDIENCE. THE SPEAKERS FOCUSED ON ISSUES RELATED TO IPR, IPR INFRINGEMENT, AND IPR ENFORCEMENT THROUGH JUDICIAL, ADMINISTRATIVE AND PRIVATE REMEDIES USING EXAMPLES FROM HONG KONG, CHINA AND GERMANY'S LEGAL SYSTEM ON

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